

GENERAL ORDER
FAIRFAX COUNTY POLICE DEPARTMENT



SUBJECT: MISDEMEANOR ARRESTS/SUMMONS
RELEASE

NUMBER: 601.1

CANCELS ORDER DATED: 4-1-12

DATE: 7-1-12

I. MISDEMEANORS OTHER THAN TRAFFIC OFFENSES

A. Code of Virginia 19.2-74

§ 19.2-74. Issuance and service of summons in place of warrant in misdemeanor case; issuance of summons by special policemen and conservators of the peace.

A. 1. Whenever any person is detained by or is in the custody of an arresting officer for any violation committed in such officer's presence which offense is a violation of any county, city or town ordinance or of any provision of this Code punishable as a Class 1 or Class 2 misdemeanor or any other misdemeanor for which he may receive a jail sentence, except as otherwise provided in Title 46.2, or for offenses listed in subsection D of § 19.2-81, or an arrest on a warrant charging an offense for which a summons may be issued, and when specifically authorized by the judicial officer issuing the warrant, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving by such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of § 19.2-82.

Anything in this section to the contrary notwithstanding, if any person is believed by the arresting officer to be likely to disregard a summons issued under the provisions of this subsection, or if any person is reasonably believed by the arresting officer to be likely to cause harm to himself or to any other person, a magistrate or other issuing authority having jurisdiction shall proceed according to the provisions of § 19.2-82.

2. Whenever any person is detained by or is in the custody of an arresting officer for a violation of any county, city, or town ordinance or of any provision of this Code, punishable as a Class 3 or Class 4 misdemeanor or any other misdemeanor for which he cannot receive a jail sentence, except as otherwise provided in Title 46.2, or to the offense of public drunkenness as defined in § 18.2-388, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving of such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of § 19.2-82.

3. Any person so summoned shall not be held in custody after the issuance of such summons for the purpose of complying with the requirements of Chapter 23 (§ 19.2-387 et seq.) of this title. Reports to the Central Criminal Records Exchange concerning such persons shall be made after a disposition of guilt is entered as provided for in § 19.2-390.

Any person refusing to give such written promise to appear under the provisions of this section shall be taken immediately by the arresting or other police officer before a magistrate or other issuing authority having jurisdiction, who shall proceed according to provisions of § 19.2-82.

Any person who willfully violates his written promise to appear, given in accordance with this section, shall be treated in accordance with the provisions of § 19.2-128,

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regardless of the disposition of, and in addition to, the charge upon which he was originally arrested.

Any person charged with committing any violation of § 18.2-407 may be arrested and immediately brought before a magistrate who shall proceed as provided in § 19.2-82.

B. Special policemen of the counties as provided in § 15.1-144, special policemen or conservators of the peace appointed under Chapter 2 (§ 19.2-12 et seq.) of this title and special policemen appointed by authority of a city's charter may issue summonses pursuant to this section, if such officers are in uniform, or displaying a badge of office. On application, the chief law-enforcement officer of the county or city shall supply each officer with a supply of summons forms, for which such officer shall account pursuant to regulation of such chief law-enforcement officer.

C. The summons used by a law-enforcement officer pursuant to this section shall be in form the same as the uniform summons for motor vehicle law violations as prescribed pursuant to § 46.2-388

B. Criteria for Release on Summons

1. Class 1 and 2 Misdemeanors

Legally, one of two conditions must exist before the arresting officer may bring the person arrested before a special magistrate:

- a. The arresting officer believes that the person is likely to disregard the summons.

This belief should be based on one or more of the following facts:

- 1) The person has no community ties, such as transient, unemployed, etc.

NOTE: Military non-residents who have a local address and/or are stationed in the metropolitan area on military orders are not to be considered transients.

- 2) Inability to furnish proper identification.
- 3) The person attempts to escape or resists arrest.
- 4) The person cannot understand the conditions of the summons requiring future appearance in court.

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- 5) The person makes a statement which indicates an intent to disregard the summons or refuses to sign the summons.
 - 6) The arresting officer has knowledge of the person's prior history of failing to appear in court.
 - 7) A warrant check discloses the existence of an outstanding warrant on file for the arrestee.
- b. The arresting officer believes that the person is likely to harm himself or another person if released on a summons. This belief should be based on one or more of the following facts:
- 1) The person is apparently under the influence of a drug, including alcohol.
 - 2) The person exhibits violent or irrational behavior before, during, or after the arrest.
 - 3) The person's statements or behavior indicate a likelihood that they will continue the offense or commit another offense if released immediately on a summons. Taking the person before the magistrate will allow a "cooling off" period for all parties involved.
2. Class 3 and 4 Misdemeanors and misdemeanors for which there is no jail sentence:
- a. An individual may be arrested and taken before a magistrate for these offenses only if one or more of the following conditions exist:
- 1) Refusal to furnish name and address.
 - 2) Refusal to sign the summons.
 - 3) A violation of § 18.2-407 of the Virginia Code, Remain at the Scene of a Riot, After Being Told to Disperse.

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- 4) A violation of § 18.2-388 of the Virginia Code, Profane Swearing and Drunkenness in Public.
- 5) Refusal to discontinue the unlawful act.
- 6) A violation of § 18.2-266.1 of the Virginia Code, Operate a Motor Vehicle After Illegally Consuming Alcohol Under Age 21.

C. Special Procedures in Warrant Cases (Applicable Only to Misdemeanor Warrants)

1. In serving an arrest warrant for a misdemeanor offense, the arresting officer may be confronted with a situation in which the person to be arrested should not be taken into custody. Examples of such cases are those in which the person to be arrested has small children which cannot be left unattended or where the person appears to the officer to be ill.
2. In such circumstances the arresting officer's immediate supervisor will contact a special magistrate and request authority to serve the warrant as a summons.
3. If possible, the special magistrate who issued the warrant shall be contacted. If that magistrate is not available any special magistrate may be contacted.
4. If the special magistrate grants approval to serve the warrant as a summons, the arresting officer shall give the defendant a copy of the warrant and complete a summons form. In lieu of the defendant's signature the officer will write in the signature block, "Summons/Warrant, authority (name of special magistrate)."
5. As soon as possible after serving the warrant the officer shall return the executed original of the warrant to the special magistrate who authorized its service as a summons.

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6. The summons shall be completed and processed in accordance with departmental procedures.
7. Other misdemeanor warrants which are issued for service as a summons shall be handled as follows:
 - a. The serving officer shall give the defendant a copy and execute the original to indicate service.
 - b. A summons form shall be completed. In addition to the offense charged the officer shall write in the offense portion of the summons form, "Warrant: Complainant - (Name)."
 - c. The original of the warrant, along with the court copy of the summons and a completed Warrant Control Form, if applicable, shall be forwarded to the Warrant Desk for transmittal to court. The remaining portion of the summons is processed in accordance with departmental procedures.
 - d. If the defendant refuses to sign the summons, the defendant should be taken before the nearest magistrate for further disposition. In the circumstances of serving a "summons only warrant" on a corporation, the individual accepting service shall not be required to sign the summons.

D. CCRE Requirements

1. Persons arrested and to be released on a summons shall not be held in custody after the issuance of the summons for the purpose of completing the CCRE reports.
2. In cases where a person is arrested for CCRE reportable offense and is released on a summons, the CCRE processing shall be completed by the Sheriff's Department after the disposition of guilt is entered in court. This applies when a misdemeanant is released in the field on a written summons. It does not apply to felony arrests or arrests on a warrant in which the person is brought before a special magistrate and subsequently released on bond or other form of pretrial release.

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3. All CCRE forms must be sent to the Central Exchange as a package. This includes occasions when fingerprint cards are left at the jail for a prisoner to be processed prior to release; all other CCRE forms must also be left.
4. In all CCRE reportable cases where an arrested person is not released in the field but is taken before a special magistrate, the arresting officer shall be responsible for completion of the CCRE reports after appearing before the special magistrate. Attempts to identify the individual should be accomplished prior to appearing before the special magistrate.
5. If the charge is amended to an offense which is not CCRE reportable, nol-prossed, dismissed, or the person is found not guilty, no report to the CCRE shall be made.
6. Porelon pads will not be used for fingerprinting prisoners. Porelon pads may only be used for processing citizen walk-in requests, children's fingerprinting programs, and other non-police related uses.

E. Service of Magistrate's Summons

1. Magistrate's Summonses will be processed the same as a warrant and according to the provisions set forth in General Order 601, IV. B, Warrant Control Procedures.

NOTE: It is important that magisterial summonses not be entered into the Virginia Criminal Information Network (VCIN). This becomes problematic when officers are conducting traffic stops and discover that the subject has been entered into VCIN and therefore will not have access to the summons on which to serve. Section § 19.2-76 Code of Virginia, states that a warrant or capias shall be executed by the arrest of the accused and a summons shall be executed by delivering a copy to the accused personally.

There are provisions in Section § 19.2-81 Code of Virginia, for arrest without a warrant for subjects apprehended outside the jurisdiction of the original offense. However, there is no provision for the subject to

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be detained until a magisterial summons can be retrieved from the entering agency and executed on the subject. There are no provisions in VCIN for entering magisterial summonses into the wanted files, thus an agency and its officers can incur liability in the event of an unlawful detention.

2. The officer serving the summons shall deliver a copy to the person named as the defendant and execute the original to indicate service.
3. The officer serving the summons shall at no time take the subject into custody based solely on the Magistrate's Summons charge(s) or to effect the summons services.
4. A Virginia Uniform Summons shall be completed when a Magistrate Summons is served for a traffic violation that is not entered into the I/LEADS Arrest Module. The summons can be completed in one of two ways:
 - A PD60 is completed and the Court copy is submitted along with Magistrate Summons. No other copies of the PD60 are needed.
 - From the Citation Module, the Summons Report (Court copy) can be printed and submitted along with the Magistrate Summons.

With either method, the Remarks section of the PD60 or Citation Module should have the text of "Magistrate Summons" and the signature line should have the text of "Served True Copy" notated.

NO SIGNATURE IS NECESSARY ON A VIRGINIA UNIFORM SUMMONS IN THE CASE OF A SERVICE OF A MAGISTRATE'S SUMMONS.

5. The officer serving a parking summons from another jurisdiction shall not complete a Virginia Uniform Summons but shall comply with the other provisions of this subsection.

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II. TRAFFIC OFFENSES

A. Code of Virginia; 46.2-936, 46.2-937, 46.2-940

§ 46.2-936. Arrest for misdemeanor; release on summons and promise to appear; right to demand hearing immediately or within twenty-four hours; issuance of warrant on request of officer for violations of §§ 46.2-301 and 46.2-302; refusal to promise to appear; violations.

Whenever any person is detained by or in the custody of an arresting officer, including an arrest on a warrant, for a violation of any provision of this title punishable as a misdemeanor, the arresting officer shall, except as otherwise provided in § 46.2-940, take the name and address of such person and the license number of his motor vehicle and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Such time shall be at least five days after such arrest unless the person arrested demands an earlier hearing. Such person shall, if he so desires, have a right to an immediate hearing, or a hearing within twenty-four hours at a convenient hour, before a court having jurisdiction under this title within the county, city, or town wherein such offense was committed. Upon the giving by such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody.

Notwithstanding the foregoing provisions of this section, if prior general approval has been granted by order of the general district court for the use of this section in cases involving violations of §§ 46.2-301 and 46.2-302, the arresting officer may take the person before the appropriate judicial officer of the county or city in which the violation occurred and make oath as to the offense and request issuance of a warrant. If a warrant is issued, the judicial officer shall proceed in accordance with the provisions of Article 1 (§ 19.2-119 et seq.) of Chapter 9 of Title 19.2.

Notwithstanding any other provision of this section, in cases involving a violation of § 46.2-341.24 or § 46.2-341.31, the arresting officer shall take the person before a magistrate as provided in §§ 46.2-341.26:2 and 46.2-341.26:3. The magistrate may issue either a summons or a warrant as he shall deem proper.

Any person refusing to give such written promise to appear under the provisions of this section shall be taken immediately by the arresting officer before a magistrate or other issuing officer having jurisdiction who shall proceed according to the provisions of § 46.2-940.

Any person who willfully violates his written promise to appear, given in accordance with this section, shall be treated in accordance with the provisions of § 46.2-938.

Any officer violating any of the provisions of this section shall be guilty of misconduct in office and subject to removal therefrom upon complaint filed by any person in a court of competent jurisdiction. This section shall not be construed to limit the removal of a law-enforcement officer for other misconduct in office.

1. While § 46.2-936 permits general district courts to grant arresting officers prior approval to take persons before a magistrate in cases involving §§ 46.2-301 and 46.2-302, the chief judge of the Nineteenth Judicial General District Court (Fairfax County) does not grant officers

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this general approval. The chief judge does not grant prior approval, unless an officer feels release by summons is not sufficient to insure an individual's appearance in court on the established hearing date.

2. Persons arrested for driving on a suspended license with or without notice (e.g., Suspended or Revoked DWI related) shall be released on a summons if they meet the criteria for release according to 19.2-74. See Section I, Subsection B (Criteria for Release on a Summons) of this General Order for additional guidance.
3. A significant number of DUI and traffic-related offenses from Titles 18.2 and 46.2 of the *Code of Virginia* have been adopted "by reference" into the County Code Section 82-1-6. For prosecution purposes, the State Code section and the County Code section adopted under 82-1-6 are identical. It is the Department's policy that officers, when citing one of these offenses, **shall** cite the County code under Section 82-1-6.

§ 46.2-937. Traffic infractions treated as misdemeanors for arrest purposes.

For purposes of arrest, traffic infractions shall be treated as misdemeanors. Except as otherwise provided by this title, the authority and duties of arresting officers shall be the same for traffic infractions as for misdemeanors.

§ 46.2-940. When arresting officer shall take person before issuing authority.

If any person is: (i) believed by the arresting officer to have committed a felony; (ii) believed by the arresting officer to be likely to disregard a summons issued under § 46.2-936; or (iii) refuses to give a written promise to appear under the provisions of § 46.2-936 or § 46.2-945; the arresting officer shall promptly take him before a magistrate or other issuing authority having jurisdiction and proceed in accordance with the provisions of § 19.2-82. The magistrate or other authority may issue either a summons or warrant as he shall determine proper.

4. Note that persons arrested for a violation of the Motor Vehicle Code, including but not limited to an arrest on a warrant and Speed to Elude, shall be released on a summons except as provided in § 46.2-940.
5. Officers who violate this provision shall be guilty of misconduct in office and subject to removal therefrom upon complaint filed by any person in a court of competent jurisdiction.

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B. Arrest of Non-Resident for Traffic Offenses

1. Non-Resident Violator Compacts are currently in effect between Virginia and a number of other states. Whenever states are added or deleted from these compacts, the addition or deletion will be announced by memorandum.
2. These compacts are provided for in §§ 46.2-944 through 46.2-946.

§ 46.2-944. Definitions. - As used in this article:

"Jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

"Home jurisdiction" means the jurisdiction that issued the driver's license of the traffic violator.

"Issuing jurisdiction" means the jurisdiction in which the traffic citation was issued to the motorist.

"Party jurisdiction" means any jurisdiction which by its laws or by written agreement with the Commonwealth extends to residents of Virginia substantially the rights and privileges provided by this article.

"Court" means a court of law or traffic tribunal.

"Citation" means any summons, ticket, or other official document issued by a police officer for a traffic violation containing an order which requires the motorist to respond.

"Terms of the citation" means those options expressly stated upon the citation.

"Compliance" means the motorist must appear for a hearing and/or pay court fines and costs.

"Driver's license" means any license or privilege to operate a motor vehicle issued under the laws of the home jurisdiction.

"Collateral" or "bond" means any cash or other security deposited to secure an appearance for trial, following the issuance by a police officer of a citation for a traffic violation.

"Personal recognizance" means a signed agreement by a motorist made at the time of issuance of the traffic citation that he will comply with the terms of that traffic citation.

"Motorist" means a driver of a motor vehicle operating in a party jurisdiction other than the home jurisdiction.

"Police officer" means any individual authorized by the party jurisdiction to issue a citation for a traffic violation.

§ 46.2-945. Issuance of citation to motorist; party jurisdiction; police officer to report noncompliance with citation.

A. When issuing a citation for a traffic violation, a police officer shall issue the citation to a motorist who is a resident of or holds a driver's license issued by a party jurisdiction and shall not, subject to the exceptions noted in subsection C of

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this section, require such motorist to post collateral or bond to secure appearance for trial, but shall accept such motorist's written promise that he will comply with the terms of such citation; provided, however, the motorist shall have the right upon his request to post collateral or bond in a manner provided by law and, in such case, the provisions of this article shall not apply.

B. In the absence of the motorist's written promise, the officer shall proceed according to the provisions of § 46.2-940.

C. No motorist shall be entitled to receive a citation under the terms of subsection A of this section nor shall any police officer issue such citation under the same in the event the offense for which the citation is issued shall be one of the following: (i) an offense for which the issuance of a citation in lieu of a hearing or the posting of collateral or bond is prohibited by the laws of this Commonwealth; or (ii) an offense, the conviction of or the forfeiture of collateral for which requires the revocation of the motorist's license.

D. Upon the failure of any motorist to comply with the terms of a traffic citation, the police officer or the appropriate official shall report this fact to the Department of Motor Vehicles. Such report shall clearly identify the motorist; describe the violation, specifying the section of the statute, code or ordinance violated; shall indicate the location of the offense, give description of vehicle involved, and show the registration or license number of the vehicle. Such report shall be signed by the police officer or appropriate official.

§ 46.2-946. Department to transmit officer's report to party jurisdiction; suspension of resident's license for noncompliance with citation issued by party jurisdiction.

Upon receipt of the report as described in § 46.2-945, the Department of Motor Vehicles shall transmit a certified copy of such report to the official in charge of the issuance of driver's licenses in the home jurisdiction in which the motorist resides or by which he is licensed.

Upon receipt from the issuing jurisdiction of a certification of noncompliance with a citation by a motorist holding a driver's license issued by this Commonwealth, the Commissioner of the Department of Motor Vehicles forthwith shall suspend such motorist's driver's license. The order of suspension shall indicate the reason for the order, and shall notify the motorist that his license shall remain suspended until he has furnished evidence satisfactory to the Commissioner that he has fully complied with the terms of the citation which was the basis for the suspension order.

The licensing authority of the issuing jurisdiction may suspend the privilege of a motorist for whom a report has been transmitted.

It shall be the duty of the Commissioner of Motor Vehicles to ascertain and remain informed as to which jurisdictions are party jurisdictions hereunder and, accordingly, to maintain a current listing of such jurisdictions, which listing he shall from time to time cause to be disseminated among the appropriate departments, divisions, bureaus and agencies of this Commonwealth, the principal executive officers of the several counties, cities and towns of this Commonwealth and the licensing authorities in all other jurisdictions which are, have been, or claim to be a party jurisdiction pursuant hereto.

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Consistent with the terms of the applicable Nonresident Violator Compact, the home jurisdiction shall take no action regarding any report transmitted by the issuing jurisdiction, which is transmitted more than six months after the date on which the traffic citation was issued.

Consistent with the terms of the applicable Nonresident Violator Compact, the home jurisdiction shall take no action regarding any report on any violation where the date of issuance of the citation predates the entry into the compact for the two party jurisdictions affected.

3. Note that Paragraph (c) under § 46.2-945 specifies that no person shall be entitled to receive a citation in the event the offense is in one of two categories.
 - a. An offense for which the issuance of a citation in lieu of a hearing or the posting of collateral or bond is prohibited by the laws of this State. Refer to § 46.2-940.
 - b. An offense, the conviction of or the forfeiture of collateral for which requires the revocation of the motorist's license. The following offenses fall into this category:
 - 1) DWI (refer to § 46.2-389).
 - 2) Voluntary or involuntary manslaughter resulting from the driving of a motor vehicle (refer to § 46.2-389).
 - 3) Any crime punishable as a felony under the motor vehicle laws of the Commonwealth or any other felony in the commission of which a motor vehicle is used (refer to § 46.2-389).
 - 4) Failure to stop and disclose one's identity at the scene of an accident, on the part of a driver or a motor vehicle involved in an accident resulting in the death or injury to another person (refer to §§ 46.2-389 and 46.2-894).
 - 5) Perjury or the making of a false affidavit to Department of Motor Vehicles of the Commonwealth under Chapter 3 of Title 46.2 or any other law of the Commonwealth requiring the registration of motor

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vehicles or regulating their operation on the highways (refer to § 46.2-389).

- 6) Racing, upon a fourth conviction (refer to §§ 46.2-394 and 46.2-865).
- 7) The making of a false statement to the Department of Motor Vehicles of the Commonwealth on any application for a driver's license (refer to § 46.2-389).
- 8) Driving after forfeiture of a driver's license for DWI and DWI-related offenses under 18.2-272 (refer to §§ 18.2-272, 46.2-389, and 46.2-391).

§ 46.2-389. Required revocation for one year upon conviction or finding of guilty of certain offenses; exceptions.

A. The Commissioner shall forthwith revoke, and not thereafter reissue for a period of time specified in subsection B, except as provided in § 18.2-271 or § 18.2-271.1, the driver's license of any resident or nonresident on receiving a record of his conviction or a record of his having been found guilty in the case of a juvenile of any of the following crimes, committed in violation of a state law or a valid county, city, or town ordinance or law of the United States, or a law of any other state, substantially paralleling and substantially conforming to a like state law and to all changes and amendments of it:

1. Voluntary or involuntary manslaughter resulting from the driving of a motor vehicle;
2. Violation of § 18.2-266 or § 18.2-272, or subsection A of § 46.2-341.24 or violation of a substantially similar local ordinance;
3. Perjury or the making of a false affidavit to the Department under this chapter or any other law of the Commonwealth requiring the registration of motor vehicles or regulating their operation on the highways;
4. The making of a false statement to the Department on any application for a driver's license;
5. Any crime punishable as a felony under the motor vehicle laws of the Commonwealth or any other felony in the commission of which a motor vehicle is used;
6. Failure to stop and disclose his identity at the scene of the accident, on the part of a driver of a motor vehicle involved in an accident resulting in the death of or injury to another person; or
7. Violation of § 18.2-36.1 or § 18.2-51.4.

B. Upon conviction of an offense set forth in subsection A, the person's driver's license shall be revoked for one year; however, for a violation of subdivision A 1 or A 7, the driver's license shall be revoked as provided in subsection B of § 46.2-391. However, in no such event shall the Commissioner

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reinstate the driver's license of any person convicted of a violation of § 18.2-266, or of a substantially similar valid local ordinance or law of another jurisdiction, until receipt of notification that such person has successfully completed an alcohol safety action program if such person was required by a court to do so unless the requirement for completion of the program has been waived by the court for good cause shown.

5. A traffic violator licensed by a state which does not have a reciprocal agreement with Virginia will be allowed to follow the arresting officer to the nearest special magistrate, except in cases where physical custody is necessary. The motor vehicle will be towed for safekeeping unless another licensed driver is present and the violator can lawfully, knowingly, and intelligently entrust the motor vehicle to such person who is willing to assume such responsibility.

C. Instructions for Accident Cases Involving Traffic Infraction Charges

1. Officers should not issue subpoenas at the scene of an accident to any witnesses if the defendant is being charged with a prepayable offense.
2. Officers should give any driver involved in an accident, where summonses are being issued for prepayable offenses, a copy of the form provided by the Fairfax County General District Court entitled, "Information on Prepayable Offenses and Requesting Trials in Accident Cases." This form has been revised to include a statement advising the defendant involved in an accident that, if he plans to appear for trial and plead not guilty, the appropriate block should be checked and the form mailed to the Clerk's Office within seven days of receiving the summons from the officer. This statement further advises the defendant that if the request for trial is received, the case will be continued and the officer will subpoena witnesses for the next court date. A continuance notice will be mailed to the defendant at the addresses listed on the summons to notify him of the new court date.
3. If the form requesting a trial is received from the defendant prior to the court date, the case will be automatically continued. The continued date will be noted on the court docket for the original date

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and this will provide notice to the officer that witnesses will be required for the subsequent date.

4. On the original court date, if the defendant has not sent in the form requesting a trial and does not appear, he may be tried in his absence based on the officer's testimony and evidence.
5. The defendant may also appear and plead guilty and the case may be tried and concluded.
6. If the defendant appears in person on the original court date and pleads not guilty, the case will be continued so that the officer may subpoena any witnesses that are essential to the prosecution's case.
7. Once continued, the officer must complete district court form DC-325, Request for Witness Subpoena, and submit it to the court for issuance of witness subpoenas. The officer should include phone numbers for all witnesses listed on the request.
8. The Clerk's Office will prepare and issue the witness subpoenas.
9. After the case is continued, it is still possible for the defendant to prepay the charge and avoid coming to court. While this may be a rare occurrence, officers should be aware that if a payment is received, the Clerk's Office will attempt to notify either the witness or officer by phone. For this reason, it is important that officers include telephone numbers of witnesses on the "Request for Witness Subpoena" form.

III. REQUESTS FOR IMMEDIATE TRIAL

- A. Section § 46.2-936 of the Code of Virginia and § 82-1-31 of the Fairfax County Code allow a person accused of most traffic infractions or misdemeanors the right to an immediate trial or a trial within 24 hours. This has been interpreted by our District Court to mean that the accused has the right to an immediate trial during the court's regular business hours, if a judge, courtroom, and the officer are available. If not, the trial is set for the

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next date court is in session. This process is handled by the Clerk of the District Court.

1. Responsibility for dealing with these requests rests with the Clerk of the Court. They are not the responsibility of the officer.
 2. The exercise of this right rests entirely with the accused.
 3. The exercise of this right follows the issuance of the summons or the arrest process. It is not part of that process.
 4. The court date officers set on their summons should not reflect this request.
 5. There is no such right for persons accused of any felony or of any traffic charges under any title or chapter other than 46.2 or 82, respectively. In addition, all DWI charges under the County Code are excluded.
- B. When issuing a summons to an accused who requests such a trial, the officer shall advise the accused of their right to such a trial and the process for exercising it. The officer will inform the accused of the requirement to sign the summons and the consequences of refusing. If the accused chooses to sign the summons, the officer must release the subject. The officer should advise the accused to do the following:
1. If court is in session (i.e., regular business hours) report to the Office of the Clerk of the District Court and make a request for trial; or,
 2. If court is not in session, report to the Clerk of the District Court the next day court is in session and make the request.
 3. a. The issuing officers may, at their discretion, accommodate the request for immediate trial by scheduling the court date for the next available date, provided that the summons is delivered to the Clerk of the General District Court's Traffic Division no later than 09:00 of the scheduled date. The court would prefer, if possible, 24 hours advance receipt of the summons.

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- b. Officers will document the request for immediate trial in their field notes on the back of their copy of the summons.
- C. In either case, the officer will return to service and will take no further action, unless summoned by the court for the trial.
- D. If the accused refuses to sign the summons, or a custodial arrest is effected for other reasons, the officer should treat it the same as any other such arrest. This means that the officer will take the accused before the nearest magistrate.
 - 1. If the accused demands immediate trial and if the court is in session (i.e., regular business hours), the accused will be directed to report to the Office of the Clerk of the District Court and make the request for trial upon release from custody or at the arraignment, if not released.
 - 2. If the accused demands immediate trial and if the court is not in session, the accused will be directed to report to the Clerk of the District Court the next day court is in session and make the request.

IV. LEGAL REFERENCES

Code of Virginia

§ 18.2-266.1	§ 19.2-74	§ 46.2-301	§ 46.2-936
§ 18.2-272	§ 19.2-76	§ 46.2-302	§ 46.2-937
§ 18.2-388	§ 19.2-81	§ 46.2-389	§ 46.2-940
§ 18.2-407		§ 46.2-391	§ 46.2-944
		§ 46.2-394	§ 46.2-945
		§ 46.2-865	§ 46.2-946
		§ 46.2-894	

Code of the County of Fairfax, Virginia

§ 82-1-6
§ 82-1-31

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V. ACCREDITATION STANDARDS REFERENCE

VLEPSC

ADM.	OPR
02.02	07.01
	07.02
	07.03

This General Order becomes effective July 1, 2012 and rescinds all previous rules and regulations pertaining to the subject.

ISSUED BY:

APPROVED BY:

A handwritten signature in black ink, appearing to be "M. M. [unclear]".

Chief of Police

A handwritten signature in black ink, appearing to be "Edward L. [unclear]".

County Executive